CORRECTED COPY

No. 09-1450

IN THE

Supreme Court of the United States

RICHARD LARIVIERE,
Petitioner,

v.

HELEN LARIVIERE,
Respondent.

On Petition for a Writ of Certiorari to the Massachusetts Supreme Judicial Court

BRIEF FOR RESPONDENT IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the Probate Court's Order sanctioning Petitioner for his refusal to provide discovery by prohibiting Petitioner from opposing or presenting evidence of financial circumstances or Massachusetts General Law c. 208, § 34 factors, constitutes a violation of Petitioner's Fifth Amendment rights against self incrimination and Fourteenth Amendment Rights to due process and a fair trial under the United States Constitution.

2. Whether the Massachusetts Appeals Court's judgment, affirmed by the Massachusetts Supreme Judicial Court, is in direct conflict with the holding of a United States Court of Appeals decision concerning federal constitutional rights of client privacy, confidentiality and attorney disqualification due to conflicts of interest.

3. Whether the Probate Court's allowance of a post trial motion amending the Divorce Judgment to effectuate the intent of the Court's judgment manifests injustice and the denial of Petitioner's constitutionally protected property rights without due process and his rights under the Full Faith and Credit Clause pursuant to Article IV, Section 1.

OPINIONS BELOW

The Judgment of Divorce Nisi ("Judgment of Divorce") was granted after trial by the Honorable Susan Ricci, of the Massachusetts Probate & Family Court ("Probate Court"). The Judgment of Divorce was amended on January 3, 2008 and again amended on May 21, 2008 after the Probate Court issued the Order on Motion for Relief from Judgment (Pet. App. 14a-19a). The Massachusetts Appeals Court ("Appeals Court") issued an opinion pursuant to S.J.C. Rule 1:28 on November 27, 2009. (Pet. App., 5a-10a). The Massachusetts Supreme Judicial Court ("Supreme Judicial Court") denied Petitioner's application for further appellate review on January 27, 2010. (Pet. App., 1a).

JURISDICTION

The Petition for Writ of Certiorari was filed on May 27, 2010. The jurisdiction of this Court is alleged to be invoked under 28 U.S.C. 1257, Supreme Court Rule 10 and 28 U.S.C. 1251.

STATEMENT OF THE CASE

This Petition arises from the Judgment of Divorce of the Probate Court resolving the marriage of Helen Lariviere ("Respondent") and Richard Lariviere ("Petitioner"). The Judgment of Divorce provided that Respondent would receive sixty (60%) percent and Petitioner would receive forty (40%) percent of the marital estate based on the Probate Court's evaluation of factors set forth in Massachusetts General Laws c. 208, § 34. The Court, applying the laws of the Commonwealth of Massachusetts, sanctioned Petitioner for refusing to provide discovery and for otherwise interfering with the litigation, and issued detailed factual findings. The Judgment of Divorce

was affirmed by the Appeals Court and further appellate review was denied by the Supreme Judicial Court, the highest court of the Commonwealth of Massachusetts. The Petitioner now seeks a Writ of Certiorari from this Court, for which there is no jurisdictional basis. Petitioner's reliance on 28 U.S.C. 1257, Supreme Court Rule 10(b) and 28 U.S.C. 1251 is misguided at best.

REASONS FOR DENYING CERTIORARI

I. THE COURT DOES NOT HAVE JURISDICTION TO GRANT A PETITION FOR WRIT OF CERTIORARI.

In support of his Petition for Writ of Certiorari, Petitioner relies on 28 U.S.C. 1257, Supreme Court Rule 10(b) and 28 U.S.C. 1251as grounds for jurisdiction. None of these are applicable and the petition for Writ of Certiorari must be denied for lack of jurisdiction.

A. 28 U.S.C. 1257 Is Inapplicable.

Petitioner relies on 28 U.S.C. 1257 to argue that "[t]he Massachusetts Probate Court's divorce judgment assigning to the wife, Petitioner's Delaware LLC's, is beyond the power of the Massachusetts Probate Court, is in conflict with Delaware law and is void." (Pet. Brief, 2). Reliance on 28 U.S.C. 1257 is misguided because the statute allows writs of certiorari in situations where the validity of a treaty or statute is challenged as unconstitutional, not where the validity of a state court's ruling is challenged. Specifically, 28 U.S.C. 1257(a) provides in pertinent part:

> Final judgments or decrees rendered by the highest court of a State in which a decision could

> be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States. . .

Petitioner does not challenge the validity of any statute or treaty here. He does not claim that Massachusetts General Law c. 208, § 34 is unconstitutional but, rather, claims that the Probate Court's assignment of the property pursuant to its discretion under M.G.L. c. 208, § 34 interfered with his constitutional rights. The fact that a Limited Liability Company may have been organized under the laws of Delaware does not prevent the Courts of another state from assigning ownership interests in that Company in connection with matters for which it has undeniable jurisdiction.

B. Supreme Court Rule 10(b) Is Inapplicable.

Petitioner also incorrectly asserts jurisdiction pursuant to Supreme Court Rule 10(b), which provides:

> Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons. The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers:
>
> . . . .

> (b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals. . .
>
> A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.

The Supreme Judicial Court did not "decide an important federal question". It merely refused to interfere with the decision of the Massachusetts Appeals Court regarding matters unique to the General Laws of Massachusetts, dealing with the allocation of marital property and an alleged conflict of interest of an attorney. Federal law, or any federal question, was not implicated. Petitioner's citation to cases where an attorney was disqualified based on very different facts than those present in the current action is inapposite.

C. 28 U.S.C. 1251 Is Inapplicable.

Petitioner also asserts jurisdiction pursuant to 28 U.S.C. 1251. 28 U.S.C. 1251 provides:

> (a) The Supreme Court shall have original and exclusive jurisdiction of all controversies between two or more States.
>
> (b) The Supreme Court shall have original but not exclusive jurisdiction of:
>
> (1) All actions or proceedings to which ambassadors, other public ministers, consuls, or vice consuls of foreign states are parties;
>
> (2) All controversies between the United States and a State;

(3) All actions or proceedings by a State against the citizens of another State or against aliens.

None of these provisions are applicable to these circumstances.

CONCLUSION

Because Petitioner has failed to demonstrate that this Court has jurisdiction to grant Petitioner's Petition for Writ of Certiorari, it must be denied.

Respectfully submitted,

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